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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

Amendment of Section 2.106 of the )  
Commission's Rules to Allocate Spectrum at 2 ) ET Docket No. 95-18  
GHz for Use by the Mobile-Satellite Service ) RM-7927

To: The Commission

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**COMMENTS**

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., BellSouth Wireless, Inc., and BellSouth Personal Communications, Inc. (collectively "BellSouth"), by their attorneys, hereby submit comments in response to the Commission's *Notice of Proposed Rule Making*, ET Docket No. 95-18, FCC 95-39 (Jan. 31, 1995), summarized, 60 Fed. Reg. 11644 (1995) ("NPRM") which proposes to allocate the 1990-2025 MHz (Earth-to-space) and 2165-2200 MHz (space-to-Earth) bands to the mobile-satellite service ("MSS").

BellSouth continues to support the development of new services and technologies, the core goal in the *Emerging Technologies* docket.<sup>1</sup> As the Commission has recognized, the reallocation of spectrum for new services is needed to take advantage of technological advances in telecommunications and to allow the United States to remain competitive in the international

<sup>1</sup> See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Notice of Proposed Rule Making*, 7 FCC Rcd. 1542; *Further Notice of Proposed Rule Making*, 7 FCC Rcd. 6100; *First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd. 6886 (1992); *Second Report and Order*, 8 FCC Rcd. 6495; *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd. 6589 (1993). See also BellSouth Comments, GEN Docket No. 90-314 (Nov. 9, 1992).

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telecommunications market.<sup>2</sup> Accordingly, BellSouth supports the Commission's reallocation proposal in this proceeding.

Although BellSouth supports the reallocation proposal, it opposes proposals by Celsat, TRW, and Personal Communications Satellite Corporation to allocate the 1970-1990 MHz band for MSS use.<sup>3</sup> These companies previously urged the Commission to allocate the 1970-1990 band to MSS in Docket 90-314, but the Commission declined to do so. It found that this band was needed for PCS to ensure that PCS develops as a competitive service.<sup>4</sup> Because the 1970-1990 MHz band was allocated for PCS use, the Commission revisited the allocation of the 2180-2200 MHz band for PCS and decided to reserve this band, equal in size to the 1970-1990 MHz band, for MSS use.<sup>5</sup> The Commission stated that this new MSS allocation "accommodates the future potential of MSS more fully than our original plan and therefore addresses the concerns of a majority of the MSS industry."<sup>6</sup> No new rationale has been provided for reconsidering this determination in the instant docket.

The 1970-1990 MHz band has been dedicated for use by PCS licensees on the C and F blocks, known as the entrepreneurs' blocks. The entrepreneurs' blocks were established to

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<sup>2</sup> *First Report*, 7 FCC Rcd. at 6886.

<sup>3</sup> *See NPRM* at ¶¶ 3-5.

<sup>4</sup> *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd. 4957, 4995 (1994) ("MO&O") (subsequent history omitted) (Although Personal Communications Satellite Corporation did not file comments in this docket, its parent AMSC Subsidiary Corporation did file); *see also Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Third Memorandum Opinion and Order*, 9 FCC Rcd. 6908, 6923 (1994).

<sup>5</sup> *MO&O*, 9 FCC Rcd. at 4996.

<sup>6</sup> *Id.*

“encourage the entry of designated entities” and to promote the emergence of such entities as “strong, long-term *bona fide* competitors.”<sup>7</sup> Allowing MSS to share these blocks would single out designated entities from other PCS licensees and impede their ability to become strong, viable competitors and would wreak havoc on the auction process. Potential entrepreneurs’ block bidders are basing their strategies on the 1970-1990 MHz block being dedicated to PCS use. Opening this spectrum up to MSS use after the auction would devalue these licenses, and could, potentially, make them worthless for certain applications. The prospect of MSS use could, therefore, depress the bids at the PCS auction. Moreover, any post-auction allocation that allows MSS to have primary or co-primary status could give rise to lawsuits concerning the economic effect of the reallocation on PCS licenses for which an auction price was paid.

Additionally, it is not clear that PCS and MSS can co-exist on the same band without causing harmful interference. CDMA, as proposed by Celsat,<sup>8</sup> may not be the technology chosen by PCS licensees. Thus, contrary to the Commission’s prior statements regarding the development of PCS, dictating CDMA could unnecessarily limit the flexibility of PCS licensees in bringing this new service to the public.<sup>9</sup>

Finally, BellSouth urges the Commission to make clear that the procedures set forth in the *Emerging Technologies* docket govern the relocation of 2 GHz licensees to allow MSS operations to commence and, further, that such relocation can not occur unless the existing

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<sup>7</sup> *Implementation of Section 309(j) of the Communications Act*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd. 5532, 5579, *summarized* 59 Fed. Reg. 37566 (1994) (subsequent history omitted).

<sup>8</sup> *See NPRM* at ¶ 3.

<sup>9</sup> *See Second Report and Order*, 8 FCC Rcd. at 7755; *see also MO&O*, 9 FCC Rcd. at 4960, 5021, 5025.

licensee has agreed to relocate or the three year negotiation period has concluded. These procedures provide that:

- Domestic Public Fixed Radio licensees retain primary status for two years after the Commission begins accepting applications for an emerging technology service. During this period, existing licensees may voluntarily negotiate with emerging technology licensees regarding relocation.
- If these voluntary negotiations do not occur, or do not result in a mutually acceptable relocation agreement, the emerging technology licensee must initiate a mandatory one year negotiation period for relocation.
- If no relocation agreement is reached by the conclusion of this one year mandatory negotiation period, a Domestic Public Fixed Radio licensee may be involuntarily relocated provided (1) the emerging technology licensee pays for all relocation expenses; (2) the relocation facilities will be fully comparable with those being replaced; (3) all activities necessary for placing the new facilities in operation will be completed before relocation; and (4) the emerging technology system has been fully built and tested.<sup>10</sup>

Under this procedure, there is a minimum transition period of three years before an existing licensee can be relocated. The subject *NPRM*, however, implies that a licensee may be involuntarily relocated, provided items 1-4 above have been satisfied, without regard to voluntary and mandatory negotiations.

## CONCLUSION

For the foregoing reasons, BellSouth supports the proposed allocation of the 1990-2025 MHz and 2165-2200 MHz bands for MSS but opposes the allocation of the 1970-1990 MHz


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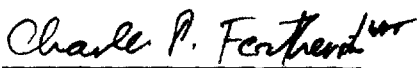
<sup>10</sup> See note 1 *supra*; see also 47 C.F.R. § 21.50(b)-(e).

band, or any PCS spectrum, for MSS use. BellSouth also urges the Commission to clarify that the procedures set forth in the Emerging Technologies docket will apply to the relocation of incumbent 2 GHz licensees for MSS operations.

Respectfully submitted,

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